

Feminist Judgments in International Law

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The Idea of the Feminist Judgments Projects

A feminist critique of international courts can confront the lack of representation and inclusion of women as well as women's lack of access to courts and the justice system. However, any critique of International Courts would be limited without a critical analysis of their output, the all important judgment! Instead of performing the usual academic critique of where the judgment was lacking in some analysis or form, another way to start this critique is through a total re-writing process of the judgment from a feminist perspective.

Feminist Judgments Projects all started in [Canada](#) with a frustrated and creative group of legal academics and activists rewriting six judgments from the Supreme Court of Canada; since then, feminist judgments projects have spread like wild fire in various domestic jurisdictions. From the [UK](#) to [Australia](#), [New Zealand](#), [Ireland](#) the [USA](#), and India, re-written judgments are providing alternatives to landmark judgments. We decided to take this phenomenon to International Law, and formed a large group of academics and activists who tackled various international judgments and decisions. With over 50 people involved and 14 chambers re-writing judgments, the end result will be a fascinating new body of re-imagined international law judgments.

The Project

As such, the Feminist International Judgment Projects is a unique venture in which legal scholars have emerged from their usual academic pursuits and collaborate in the 'real world' task of (re)writing key international judgments from a feminist perspective. In our project, the participants worked in groups similar to a chamber and had to thrash out what their 'feminist judgment' would be for their particular case. In departing from academic convention and exploring the possibilities and limitations to be found in the collaboration and compromise of writing judgments, rather than focus on individual viewpoints, participants had their perspectives constantly challenged.

Chambers also had to compose an introduction to the judgment that would road map the differences between the original and re-written judgments for the reader; following the judgment, the chamber have been asked to reflect on the process in its entirety, allowing

the reader glimpses into the chamber's process and the challenges faced in the re-writing process.

The Judgments

The rules were simple: no sources could be used that were not available at the time the original judgment was delivered, and chambers had to follow the rules of the particular court they were re-writing a judgment from. There are many different courts and tribunals involved in the project, for example:

France v. Turkey, Permanent Court of International Justice

Germany v. Italy, International Court of Justice

Reservations to the Genocide Convention, International Court of Justice

Libyan Arab Jamahiriya v. UK and USA, International Court of Justice

Gomez-Limon v. INSS, Court of Justice for the European Union

Comunidad Indígena Xákmok Kásek v. Paraguay, Inter-American Court of Human Rights

Kell v. Canada, Committee on the Elimination of Discrimination Against Women

ABC v. Ireland, European Court of Human Rights

Goodwin v. UK, European Court of Human Rights

Leyla Sahin v. Turkey, European Court of Human Rights

Ruusunen v. Finland, European Court of Human Rights

Opuz v. Turkey, European Court of Human Rights

The Prosecutor v. Lubanga Dyilo, International Criminal Court

Prosecutor v. Brima, Kamara and Kanu, Special Court for Sierra Leone

The Results and Impact

The judgments cover a range of interesting and valuable topics as women's reproductive rights, freedom of religion, a women's right to property, gender identity and the female child soldiers' experience in conflict. However, importantly, judgments also cover issues and topics that may not specifically relate to women or have an obvious feminist agenda. The original Lotus case is a good example of this: renamed the *Bozkurt* case in our collection of judgments, the chamber reframes the story of the collision between the Lotus and the Bozkurt ships differently and revisualised the meaning of the concept of sovereignty in international law. Other judgments on more traditional topics also offer fertile ground for a feminist re-write for example, the provisional measures application by Libya fearing economic sanctions from the US and UK after the Lockerbie plane crash. This case opens a discussion on potential review of a Security Council Resolution and the use or misuse of power in international organisations. Several chambers referred to the context of the political situation of their particular case in outlining their judgment, context was seen as important for telling the story and remembering the people involved in the case. Other important topics such as the limits of treaty reservations and the extent of state immunities can, through feminist insight, be re-written to expose a

different and fascinating insight into these topics.

Overall these judgments, to be published by Hart, provide a forum in which feminist legal scholars can engage in a meaningful way with (and challenge) patriarchal values and inequalities that are engrained in international legal norms, methodologies and principles. It allows for an active, imaginative – even playful – response to those structural biases, while at the same time demanding the author (the judge) to provide a concrete response and alternative to them. Although other projects precede us that have involved the re-writing of judgments in some form, this project is unique not least in so far as it depends upon a collaborative methodology.

Promoting Feminist Scholarship

A feminist international judgments project is both timely and relevant. Feminists are increasingly at the forefront of critical international legal scholarship; in practice, however, feminists' work has arguably failed to make an impact on mainstream international law and in judicial thinking. International Law is an area notoriously dominated by male perspectives and a number of feminists have expressed concern about the silencing of feminist voices in international law. This project raises to the challenge of adopting innovative approaches in order to address this omission. The re-writing of judgments demonstrates in meaningful ways possible alternatives to the structural inequalities of traditional international law.

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